1267

Mr Justice Clifford

SUPREME COURT OF THE UNITED STATES.

No. 293.

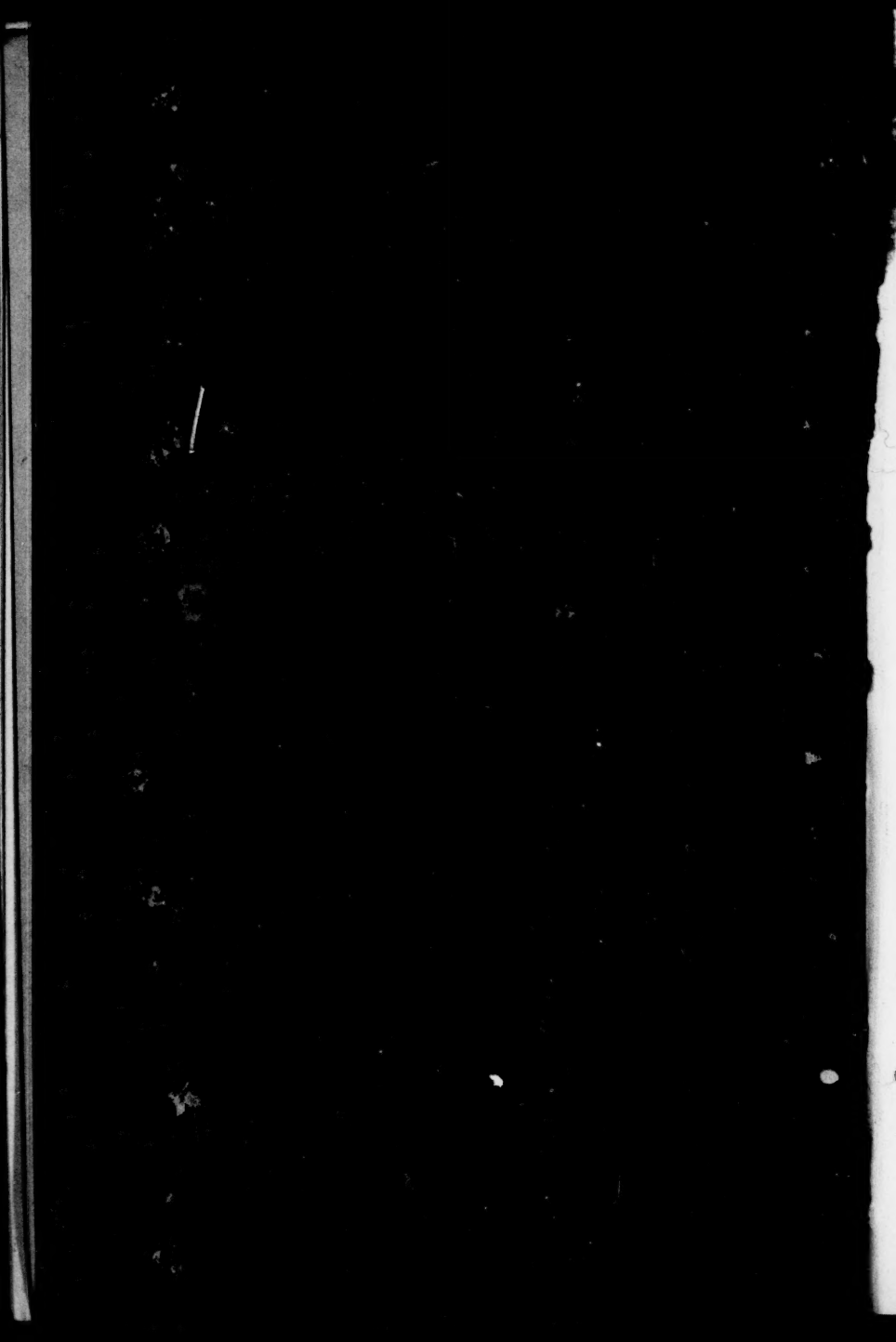
THE UNITED STATES, PLAINTIFFS, (ON INDICTMENT,)

vs.

JOHN, OTHERWISE CALLED JOHNNY, OTHERWISE CALLED JOHN CANOE, OTHERWISE CALLED JACKALOW.

ON A CERTIFICATE OF DIVISSION IN OPINION BETWEEN THE JUDGES OF THECIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF NEW JERSEY.

GOVERNMENT PRINTING OFFICE.



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1 UNITED STATES OF AMERICA,
Third circuit, district of New Jersey, ss:

Be it remembered that at a stated term of the circuit court of the United States holden at Trenton, in and for the third circuit and district of New Jersey, on the fourth Tuesday of September, A. D. 1860, and continued by adjournments until the sixth day of October, 1860, before the hon'ble Rob. C. Grier, circuit judge, and Philemon Dickerson, district judge, according to the form of the statute in such case made and provided, by the oath and affirmation of Philemon Dickerson, R. M. Smith, Lewis Perrine, Robert P. Stoll, E. C. Moore, James J. Martin, Henry Kelsey, John Townsend, James F. Bond, Robert F. Southard, Jonathan Pickle, John S. Pershine, John Stoutenburgh, George Black, George B. Raymond, John Hood, William A. Butler, Daniel B. Bodine, John Congar, Samuel Kay, and Charles Depport, good and lawful men of the district aforesaid, duly summoned, and then and there sworn or affirmed, and charged to inquire for the said the United States, in and for the body of the district aforesaid, it is presented in manner and form following, to wit:

2 In the circuit court of the United States of America, in and for the district of New Jersey, in the third circuit, of the term of September, in the year of our Lord one thousand eight hundred and sixty.

DISTRICT OF NEW JERSEY, *ss:*

The grand jurors of the United States of America, in and for the district and circuit aforesaid, upon their respective oath and affirmation, present: That John, otherwise called Johnny, otherwise called John Canoe, otherwise called Jackalow, late of the county of Hudson, in the district and circuit aforesaid, mariner, heretofore, to wit, on the fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, with force and arms, on the high seas, on waters within the admiralty and maritime jurisdiction of this court, in and on board of a certain American vessel called "The Spray," owned in whole or in part by a citizen or citizens of the said United States, whose name or names are to the jurors aforesaid unknown, piratically, feloniously, and violently an assault did make in and upon one Jonathan F. Leete, then and there being one of the ship's company of the said American vessel "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniously and violently did put, and then and there, in the presence and against the will of him, the said Jonathan F. Leete, piratically, feloniously, and violently did seize, take, and carry away thirty pieces of gold coin, called half eagles,
3 of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelve pieces of gold coin, called dollars, of the value of one dollar each, current and lawful money of the United States,

amounting together to the sum of two hundred and sixty-two dollars; twelve silver half dollars, of the value of fifty cents each; one hundred silver quarter dollars, of the value of twenty-five cents each, current and lawful money of the United States, amounting together to the sum of thirty-one dollars; one bank note of the Mechanics' Bank of New York city, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; one bank note of the State Bank at Newark for the payment of two dollars, and of the value of two dollars, and upon which two dollars was due; and one coat of the value of one dollar, of the goods, effects, and personal property of the said Jonathan F. Leete, contrary to the form of the statute in such case made and provided, and against the peace of the United States of America, the government and dignity of the same.

2. And the grand jurors aforesaid, on their respective oath and affirmation aforesaid, do further present, that the said John, otherwise called Johnny, otherwise called John Canoe, otherwise called Jackalow, late of the county, district, and circuit aforesaid, mariner,
afterwards, to wit, on the same fifteenth day of March, in the year
4 of our Lord one thousand eight hundred and sixty, with force and arms, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and within the jurisdiction of this court, in and on board of a certain American vessel called "The Spray," owned in whole or in part by a citizen or by citizens of the said United States, whose name or names are to the jurors aforesaid unknown, piratically, feloniously, and violently an assault did make on and upon one Jonathan F. Leete, then and there being one of the ship's company of the said American vessel, "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniously and violently did put, and then and there, in the presence and against the will of him, the said Jonathan F. Leete, piratically, feloniously, and violently did seize, take, and carry away thirty pieces of gold coin, called half eagles, of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelves pieces of gold coin, called dollars, of the value of one dollar each, current and lawful money of the United States, amounting together to the sum of two hundred *of* sixty-two dollars; twelves silver half dollars, of the value of fifty cents each; one hundred silver quarter dollars, of the value of twenty-five cents each, current and lawfuly money of the United States, amounting together to the sum of thirty-
one dollars; one bank note of the Mechanics' Bank of New
5 York city, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; and one bank note of the State Bank at Newark, for the payment of two dollars, of the value of two dollars, and upon which two dollars was due, of the goods, effects, and personal property of the said Jonathan F. Leete, and of one Elijah J. Leete, contrary to the form of the statutes in such case made and provided, and against the peace of the United States of America, the government and dignity of the same.

3. And the grand jurors aforesaid, upon their respective oath and affirmation aforesaid, do further present, that the said John, otherwise Johnny, otherwise called John Canoe, otherwise called Jackalow, late of the county, district, and circuit aforesaid, mariner, afterwards, to wit, on the same fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, with force and arms, on the high seas, within the admiralty and maritime jurisdiction of the said United States, and within the jurisdiction of this court, in and on board a certain American vessel called "The Spray," owned in whole or in part by a citizen or by citizens of the United States, whose name or names are to the jurors aforesaid unknown, piratically, feloniously, and violently an assault did make in and upon one Jonathan F. Leete, then and there being one of the ship's company of the said American vessel, "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniously and violently did put, and
6 then and there, in the presence, and against the will of him, the said Jonathan F. Leete, piractically, feloniously, and violently did seize, take, and carry away thirty pieces of gold coin, called half eagles, of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelve pieces of gold coin, called dollars, of the value of one dollar each, current and lawful money of the United States, amounting together to the sum of two hundred and sixty-two dollars; twelve silver half dollars, of the value of fifty cents each; one hundred silver quarter dollars, of the value of twenty-five cents each, current and lawful money of the United States, amounting together to the sum of twenty-one dollars; one bank note of the Mechanics' Bank of New York city, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; one bank note of the State Bank at Newark, for the payment of two dollars, of the value of two dollars, and upon which two dollars was due, of the goods, effects, and personal property of a person or persons to the jurors aforesaid unknown, contrary to the form of the statutes in such case made and provided, and against the peace of the United States of America, the government and dignity of the same.

4. And the grand jurors aforesaid, on their respective oath and affirmation aforesaid, do further present, that the said John, otherwise called John Canoe, otherwise called Jackalow, late of the county,
7 district, and circuit aforesaid, mariner, afterwards, to wit, on the same fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, with force and arms, in a certain open roadstead, known as Long Island Sound, within the admiralty and maritime jurisdiction of the said United States, and within the jurisdiction of this court, in and on board of a certain American vessel called "The Spray," owned in whole or in part by a citizen or citizens of the United States, whose name or names are to the jurors aforesaid unknown, piratically, feloniously, and violently an assault did make in and upon one Jonathan F. Leete, then and there being

one ef the ship's company of the said American vessel, "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniously and violently did put, and then and there, in the presence and against the will of him, the said Jonathan F. Leete, piratically, feloniously, and violently did seize, take, and carry away thirty pieces of gold coin, called half eagles, of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelve pieces of gold coin, called dollars, of the value of one dollar each, current and lawful money of the United States, amounting together to the sum of two hundred and sixty-two dollars; twelve silver half dollars, of the value of fifty cents each;
8 one hundred silver quarter dollars, of the value of twenty-five cents each, current and lawful money of the United States, amounting together to the sum of thirty-one dollars; one bank note of the Mechanics' Bank of New York city, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; one bank note of the State Bank at Newark, for the payment of two dollars, of the value of two dollars, and upon which two dollars was due; and one coat of the value of one dollar, of the goods, effects, and personal property of the said Jonathan F. Leete, contrary to the statute in such case made and provided, and against the peace of the United States of America, the government and dignity of the same.

5. And the grand jurors aforesaid, upon their respective oath and affirmation aforesaid, do further present, that John, otherwise called Johnny, otherwise called John Canoe, otherwise called Jackalow, late of the county, district, and circuit aforesaid, mariner, afterwards, to wit, on the same fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, with force and arms, in a certain haven known as Long Island Sound, within the admiralty and maritime jurisdiction of the said United States, and within the jurisdiction of this court, in and on board a certain American vessel called "The Spray," owned in whole or in part by a citizen or citizens of the United States, whose name or names are to the jurors aforesaid unknown, piratical, feloniously, and violently an
9 assault did make in and upon one Jonathan F. Leete, then and there being one of the ship's company of the said American vessel "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniouly and violently did put, and then and there in the presence and against the will of him, the said Jonathan F. Leete, piratically, feloniously, and violently did seize and take, and carry away thirty pieces of gold coin, called half eagles, of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelve pieces of gold coin, called dollars, of the value of one dollar each, current and lawful money of the United States, amounting together to the sum of two hundred and sixty-two dollars; twelve silver half dollars, of the value of fifty cents each; one hundred

silver quarter dollars, of the value of twenty-five cents each, current and lawful money of the United States, amounting together to the sum of thirty-one dollars; one bank note of the Mechanics' Bank of New York city, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; one bank note of the State Bank at Newark, for the payment of two dollars, of the value of two dollars, and upon which two dollars was due; and one coat of the value of one dollar, of the goods, effects, and personal property of the said Jonathan F. Leete, contrary to the form of the statutes in such case made provided, and against the peace of the United States of America, the government and dignity of the same.

10 6. And the grand jurors aforesaid, upon their respective oath and affirmation aforesaid, do further present, that the said John, otherwise called Johnny, otherwise called John Canoe, otherwise called Jackalow, late of the county, district, and circuit aforesaid, mariner, afterwards, to wit, on the same fifteenth day of March, in the year of our Lord one thousand eight hundred and sixty, with force and arms, in a certain open roadstead, haven, basin, and bay, known as Long Island Sound, within the admiralty and maritime jurisdiction of the United States, and within the jurisdiction of this court, in and on board of a certain American vessel called "The Spray," owned in whole or in part by a citizen or citizens of the United States, whose name or names are to the jurors aforesaid unknown, piratically, feloniously and violently, an assault did make in and upon one Jonathan F. Leete, then and there being one of the ship's company of the said American vessel, "The Spray," to wit, the master and commander thereof, and him, the said Jonathan F. Leete, in bodily fear then and there feloniously and violently did put, and then and there in the presence and against the will of him, the said Jonathan F. Leete, piratically, feloniously, and violently did seize, take, and carry away thirty pieces of gold coin, called half eagles, of the value of five dollars each; forty pieces of gold coin, called quarter eagles, of the value of two dollars and fifty cents each; twelve pieces of gold coin, called dollars, of the value of one dollar

11 each, current and lawful money of the United States, amounting together to the sum of two hundred and sixty-two dollars; twelve silver half dollars, of the value of fifty cents each; one hundred silver quarter dollars, of the value of twenty-five cents each, current and lawful money of the United States, amounting together to the sum of thirty-one dollars; one bank note of the Mechanics' Bank of the city of New York, for the payment of fifty dollars, of the value of fifty dollars, and upon which fifty dollars was due; one bank note of the State Bank at Newark, for the payment of two dollars, of the value of two dollars, and upon which two dollars was due, of the goods, effects, and personal property of the said Jonathan F. Leete, contrary to the form of the statute in such case made and provided, and against the peace of the United States of America, the government and dignity of the same.

7. And the grand jurors aforesaid, on their respective oaths and affirmations aforesaid, do further present, "that the said district of

New Jersey, in the third circuit, is the district and circuit in which the said John, otherwise called Johnny, otherwise called John Canoe, otherwise called Jackalow, was found, and in which he was first apprehended for the said offence, which said indictment having been duly traversed by the jury, the jury came into court and by their foreman rendered the following verdict: "We find that the prisoner called 'John,' otherwise 'Johnny,' otherwise 'John
12 Canoe,' otherwise 'Jackalow,' is guilty of the robbery charged in the first count of the indictment, in manner and form as he stands charged therein, and that the offence was committed on board the sloop 'Spray,' which at the time was lying on the waters adjoining the State of Connecticut, between Norwalk harbor and Westchester county, in the State of New York, and at a point five miles eastward from Lyon's Point, and one and a half mile from the Connecticut shore at low-water mark. And we further find that the defendant is not guilty on the other counts in the indictment." And now, to wit, on the fourth day of April, in the term of March, in the year of our Lord, eighteen hundred and sixty-one, the counsel for the prisoner move the court to arrest the judgment on the said verdict for the causes following, to wit:

1st. Because the said court hath not jurisdiction of the said case.

2d. Because, upon the record and upon the special verdict of the jury, the court ought not to pronounce judgment upon the prisoner. And after argument of said motion, the opinions of the said judges upon the said questions were opposed. Whereupon, that the points on which the disagreement hath happened may during the the term be stated, under the direction of the judges, and certified under the seal of the court, to the Supreme Court, to be finally decided, it is ordered, that the foregoing state of the record, and the ques-
13 tions arising thereon, which is made under the direction of the judges, be certified according to the law in that case made and provided.

R. C. GRIER, *Cir. judge.*
PH. DICKERSON, *Dis. judge.*

I, Philemon Dickerson, jr., clerk of the circuit court of the United States for the third circuit and district of New Jersey, do hereby certify that the foregoing is a true copy of the indictment and proceedings therein against John, otherwise called Johnny, otherwise John Canoe, otherwise Jackalow, as they appear on record upon the minutes of said court.

Witness my hand and seal of office, this 8th day of Feb'ry, 1862.

[L. S.] PHILEMON DICKERSON, JR., *Clk.*

A. S. Holbrook, Printer, No. 3 Mechanic street, Newark, N. J.

1761

United States Supreme Court.

THE UNITED STATES,
vs.
JOHN, *alias* JOHNNY, *alias* JOHN CANOE, *alias* JACKALOW.

On Certificate of Disagreement on motion in arrest of Judgment after Conviction of Robbery on the High Seas.

The defendant, a native of the Loo Choo Islands, was convicted Feb. 1, 1861, of robbery on the high seas, under the 3d section of the act of May 15, 1820.

The verdict was special, as to the locality of the crime, and was as follows:

"We find that the prisoner called John, alias Johnny, alias John Canoe, alias Jackalow, is guilty of the robbery charged in the first count of the indictment in manner and form charged therein, and that the offense was committed on board the sloop Spray, which at the time was lying on the waters adjoining the state of Connecticut, between Norwalk Harbor, and Westchester County in the state of New York, and at a point five miles eastward from Lyon's Point, one and one-half miles from the Connecticut shore at low water mark; and we further say that the defendant is not guilty on the other counts in the indictment."

The cause was tried before Judge Dickerson sitting alone, in the U. S. Circuit Court for the District of New Jersey.

At April Term, 1861, before Judges Grier and Dickerson, a motion in arrest of judgment was made on behalf of the defendant, on the ground that the Court had no jurisdiction of the crime as found by the verdict.

The question of jurisdiction was raised at the trial, and Judge Dickerson, in an elaborate opinion (*see post*) held that the Court had *not* jurisdiction, but permitted the trial to proceed, in order that the point might be determined by a full bench if the prisoner should be convicted.

The section on which the indictment was founded is the 3d section of the act of May 15, 1820, Brightly Dig., 208, 3, 35.

(See Judge Dickerson's opinion, *post*.)

This is the only act of like nature in which the words "out of the jurisdiction of any particular state" are omitted.

See act of 30th April, 1790, sec. 8, 1 Stat., 113.

Act of March 3, 1825, sec. 4, 4 Stat., 115.

Act of March 3, 1857, sec. 1 and 2, 11 Stat., 250.

Judge Dickerson held that the provision in the statute as to the place of trial must be limited to offenses on the high seas, and that such provision as to the trial of offenses in any open roadstead, &c., within the jurisdiction of any state, though without the body of any county thereof, is unconstitutional, as infringing the 2d section of article 3 of the Constitution, and the 6th article of the amendments.

That the place of this crime as found by the verdict was within the jurisdiction of the state of New York, and that Congress could not provide that it should be tried in another district where the offender should be brought or found.

And that Long Island Sound is not the high seas.

It is submitted that none of these positions are well founded, and

1. That assuming the place of this crime to have been on shipboard, in an open roadstead, or in waters however named, within the jurisdiction of New York (being clearly without the bounds of any county), Congress did by this act provide, and had constitutional power to provide, that it should be tried in the district to which the offender should be brought, or in which he should be found, though it should be in another state.

2. That the place of the crime was not within the jurisdiction of the state of New York.

3. That it was upon the high seas.

1. Congress *did* by this act provide that such crimes committed on shipboard, or by pirates landing from a piratical craft, in a roadstead, haven, basin, or bay, or river where the *sea* ebbs and flows, as well as upon the high seas, should be tried where the offender should be brought or found, without inserting any limitation as to places "out of the jurisdiction of any state."

In the U. S. v. Bevans, 3 Wh., 336, in a case of murder committed on a ship of war in Boston Harbor, half a mile from the Long Wharf, and clearly within the jurisdiction of the state,

tried under the act of 1790, which contains this limitation, Chief Justice Marshall held that even if Massachusetts could not take cognizance of the offense, yet the U. S. Courts had no jurisdiction, because the place was within the jurisdiction of the state which, he said, "is co-extensive with its territory and with its legislative power." And added: "Whatever may be the constitutional power of Congress, it is clear that this power has not been so exercised in this act as to confer jurisdiction over any offense committed in a haven, bay, &c., which is within the jurisdiction of any particular state."

Two years after, and in view of this decision, Congress, by the act of May 15, 1820, *did* exercise this power by omitting this limitation.

What was the reason of this omission?

Was it accidental? Or was it not rather because the whole scope and purpose of the act was to punish crimes amounting to *Piracy* committed on shipboard, or by pirates casually landing from a piratical vessel?

The act meant to give jurisdiction over *such* crimes, wherever committed, to the Court of the district where the offender should be brought or found.

It adjudges him to be a Pirate—one whose crime cannot, by its very nature, be committed in any state, but only upon the waters, which are common to all.

A pirate has no nationality—no domicil—no vicinage. He is "an enemy of the human race." He cannot "put himself upon" *his* "country;" he has no country. He is "lawful spoil."

To yield jurisdiction over him to any particular state within whose territorial limits he might be passing in the pursuit of his infamous trade, would be to grant him an incongruous privilege—a privilege to which he is not entitled by the law of nature or of nations. A barren privilege, also, for no state in whose waters he may commit piracy is *his* state. A privilege properly granted to a murderer, but justly denied to a pirate.

And accordingly in the act of March 3, 1825, which defines and punishes various crimes, such as murder, rape, wounding, &c., on the high seas, or in any haven, bay, &c., these crimes are not defined to be *piracies* but, *felonies*, and the limitation of jurisdiction, confining the operation of the act to crimes commit-

ted "out of the jurisdiction of any particular state," is again inserted.

See U. S. v. Combs, 12 Pet., 72.

U. S. v. Hicks, U. S. Circuit Court for S. D. N. Y. May 30, 1862.

But even in providing for the effectual punishment of pirates Congress must be controlled by the Constitution, and if under the provisions of the Constitution, New Jersey was not the proper place for the trial of *this* pirate, the judgment must be arrested, and he must be sent to the lawful jurisdiction, if it can be ascertained, or exists, to meet his trial for other offenses charged.

In the 2d section of Article 3 of the Constitution, it is provided that "the trial of all crimes (except in cases of impeachment) shall be by jury, and shall be held in the state where such crimes shall have been committed, but when not committed within any state, the trial shall be in such place or places as Congress may by law have directed."

And in the 6th article of the amendment, it is provided that "in all criminal prosecutions the accused shall enjoy the right to a speedy and public trial by an impartial jury of the state or district wherein such crime shall have been committed, which district shall have been previously ascertained by law."

In the act under which this indictment was found, Congress has directed that this crime—robbery on shipboard on the high seas or in a roadstead, &c.—whether within the territorial limits of a state or not, shall be tried "in the Circuit Court for the district into which the offender shall be brought, or in which he shall be found."

This crime, if committed within the territorial limits of any state, was not committed within the limits of New Jersey, but the criminal was brought to, and was found in, New Jersey.

If Congress had the power to pass this law, the Circuit Court for New Jersey had jurisdiction.

Had they this power?

This is not a question of construction, but of constitutional *power*.

They have plainly attempted to exercise it, and apparently for a wise purpose.

Judge Dickerson seeks to avoid the question by a construction that shall interpolate the words "out of the jurisdiction of any

particular state," as applied to crimes committed in a roadstead, haven, bay, or river, &c., and exclude them as to the high seas.

This is not a fair or reasonable construction. Congress was providing for the punishment of *pirates*, and meant to assert the right to punish them wherever they were brought or found, if their crime had been committed anywhere within the ebb and flow of the *sea*, which is necessarily the place of that crime, though within the territorial limits of a state.

The high seas may be within the territorial limits and jurisdiction of a state as well as the other waters mentioned, at all events to the distance of a marine league, and within lines stretching from distant headlands, as from Cape Ann to Cape Cod, and from Nantucket to Montauk Point.

1 Kent Com., 29, 30.

U. S. vs. Bevans, 3 Wheat., 336.

The constitutional provision would apply with equal force to a crime committed on the high seas within the jusisdiction of a state, as to one in a bay or roadstead within a state. And if the bay or roadstead be not within a *county*, the jurisdiction of the U. S. Courts would be as *exclusive* there, as on the high seas.

Therefore it must be held that this act is unconstitutional as applied to the *place of trial* of *piracy* committed in the locality found by this verdict, in order to oust the court of jurisdiction.

Is it unconstitutional in this respect?

I cannot find that this question has ever been decided or discussed.

Assuming that the place of this crime was within the territorial limits and jurisdiction of New York or Connecticut, though not within the body of any county (as it clearly was not), must the place of trial, by the Constitution, be within one of those states, or could Congress direct where it should be?

The words of the Constitution are not "within the *jurisdiction* of a state," nor "within the territorial limits of a state," but "*within a state.*"

Even if the words used were "within the jurisdiction of a state," as in the several criminal statutes, they might well be held not to apply to crimes committed out of the body of any county, though within the territorial limits of the state. It is through the organization of counties that criminal justice is administered in the states, and a crime not committed in any county

could seldom be punished in the courts of a state. (State v. Davis, 1 Dutcher, N. J. Rep., 386.) And Justice Story held "that it is out of the jurisdiction of the state in the sense of these statutes if it be not within the body of some county within the state."

U. S. v. Grush, 5 Mason, 300.

But the words of the Constitution are even more restricted in their meaning.

They refer to crimes committed within *the state itself—its soil*—and not to crimes committed on the waters where the sea ebbs and flows, over which its local jurisdiction may extend.

What is the spirit and purpose of the provision?

The protection of the rights of the citizen accused of crime, and not of the sovereignty of the state asserting jurisdiction.

The amendment asserts a right which the *accused* shall *enjoy*, and its object seems to be to enforce and make explicit the provision of the Constitution itself, by ordaining that that right shall be speedily, publicly, and impartially bestowed.

It was not within the scope of these constitutional provisions to secure to one accused of crime on shipboard a trial in the state in whose waters the ship happened to be sailing when his crime was committed.

They were not meant to provide that a ship bound on a voyage between distant points, specified in her papers, provided for by her insurance, and not to be deviated from without risk—down a river, through a channel or strait, along the shores of a bay, through a sound—should be compelled, at the moment of the commission of a crime upon her decks, to cast anchor, take her position, measure state lines, ascertain state boundaries, in order to fix the place of trial under the Constitution, that she might deviate from her voyage to surrender the criminal, or know to what tribunal he must afterwards be remanded.

"The ship is a Wanderer." She leaves no trace behind her. She is *herself* the place of the crime. She carries with her the criminal and the proofs of the crime. She goes on her appointed way, and when she reaches her port she delivers herself of her burden, and *there* the law provides the place of trial, and secures the evidences of the crime, in pursuance of the direction of the Constitution for a crime not committed "*within a state.*"

The true purpose of the Constitution is to secure to one ac-

cused of crime committed on the soil of a state the privilege of a trial upon that soil, where the proofs of innocence or guilt remain; —the very privilege which is secured to one accused of crime on shipboard, by a trial at the place where he is brought, and the proofs of innocence or guilt with him, in the ship which is the locality of his alleged offense.

Did the Constitution mean to provide that one accused of crime committed on a ship sailing through the Florida Keys and within her territorial limits, should be set down on that coast for trial, while the ship with his witnesses sailed on to Boston?

Suppose this piracy to have been committed in the Bay of San Francisco, and the sloop brought to the Bay of New York by the pirate and sunk there; must he be taken to California for trial? Would this be a *privilege*, to grant which we must strain the meaning of a constitutional provision?

To impute such a meaning to the Constitution would be to furnish immunity to such crimes. In most cases it would be impossible to fix the locality of the crime. It might be committed while the ship was lying across the line of a county or a state. The nicest measurement of time and place by witnesses on the watch with charts and chronometers might be unavailing.

And this very case presents a forcible instance of the difficulties that Congress by this statute have wisely guarded against.

It is submitted, then, that there is nothing in the Constitution to restrain Congress from enacting that piracy on a ship or vessel on the high seas, or in an open roadstead, haven, basin, or bay, or in any river where the *sea* ebbs and flows, shall be tried in the district where the accused shall be brought, or in which he may be found.

2. But in this case the locality of the crime, as fixed by the verdict, is not "within a state."

It was clearly not within the body of any *county*. Not by the rules of law, for "the general rule is that such parts of rivers, arms, and creeks of the sea are deemed to be within the bodies of counties, where persons can see from one side to the other."

Story, J., in U. S. v. Grush, 5 Mason, 300.

Not by the actual construction of the counties, for Queens and Suffolk in New York and the counties of Southern Connecticut, by the very terms of their organization, are bounded by the shores of the Sound.

3 N. Y. Rev. Stat., 2d Ed., pp. 1, 2.

Manley v. People, 3 Selden, 298.

This sloop lay one and one-half miles from any county in Connecticut, and about six miles from any county in New York.

But it was not within the territorial jurisdiction of any state.

Connecticut is bounded South by the Sound, or as it is called in the old grants, by the *sea*.

New Am. Cyc., vol. 5, 620.

Hist. of New Haven, 31.

1 Trumbull's Hist. of Conn., 273 and Appendix 1.

It is not within the territorial jurisdiction of New York.

The boundaries of New York as laid down in her Revised Statutes are :

"Beginning at Lyon's Point, on the mouth of a brook or river called Byram River, where it falls into Long Island Sound, and running thence up along said river," &c., describing the courses and boundaries until it comes to Sandy Hook, around Staten Island, "and thence to the beginning in such manner as to include Staten Island, the Islands of Meadow on the west side thereof, Shooter's Island, Long Island, the Isle of Wight, now called Gardner's Island, Fisher's Island, Shelter Island, Plum Island, Robins Island, Ram Island, the Gull Islands, and all the islands and waters in the Bay of New York, and within the bounds above described."

1 Rev. Stat. N. Y., 2d Ed., 50.

There is great obscurity in this description as to the manner in which the line is to be run, to connect Sandy Hook with the beginning point.

The whole matter is fully discussed by Welles, J., in the case of Manley v. the People, 3 Selden, 295, and he held that the Sound is not within the jurisdiction of New York, Edmonds, J., dissenting.

But the two modes of running the line suggested by the Court are as obscure as the statute itself, and it is of little consequence which mode is adopted.

For however the line may be run, this act is not the source of jurisdiction.

It does not pretend to define this boundary as established by agreement or by original grants.

It only assumes to *declare* and *assert* the limits of the state.

The section begins, "It being deemed useful for the information of the citizens and officers of this state that its boundaries, so far as its jurisdiction is now *asserted*, should be declared, it is therefore *declared* that the state of New York is bounded as follows, Beginning," &c.

A state cannot extend its territory over its neighbors, or over the sea, by legislative enactment. It cannot parcel out the waters of the ocean by boundary lines defined by a statute.

The origin of the territorial jurisdiction of New York is in the early grants of the Crown.

The grant of Charles II. to the Duke of York of March 12, 1664, was as follows:

"Also all that island or islands commonly called by the several name or names of Matowacks, or Long Island, situate lying and being towards the west of Cape Cod and the Narrow-Higansetts, abutting upon the mainland between the two rivers there called or known by the several names of Connecticut or Hudson River; together also with the said river called Hudson's River, and all the lands from the west side of Connecticut to the east side of Delaware Bay," &c.

Leaming & Spicer's Grants and Concessions, p. 4.

It grants first the island and then the mainland, and not the whole together, bounded on the south by the ocean. It grants the river, but not the sound.

And accordingly, while the Counties of New-York, Richmond, and Westchester and those on the Lakes, by the terms of their creation, embrace lands under water, the Counties of Suffolk and Queens extend only to the sound. The Legislature did not assume to divide the sea by state or county lines.

Therefore the act asserting the boundary must be held, by its indefinite description of the line from Sandy Hook to the beginning, to mean only to embrace generally all the outlying islands belonging to the state, with such jurisdiction over the surrounding waters, as arises by the rules of law, out of their position with respect to the mainland.

3. This crime was committed, as found by the verdict, out of jurisdiction of any state and *upon the high seas*, in the sense of the criminal statutes.

Is Long Island Sound, at a point five miles east of Lyon's Point, and one and one-half miles from the Connecticut shore at

low water mark, a part of the high seas, in the meaning of the criminal statutes of the United States?

The statute under which this indictment was found, was passed "to continue in force the act of 1819, and to make *further* provision for punishing piracy."

The act of 1819 referred only to the *high seas;* this act extends its provisions to "any open roadstead, haven, basin, or bay, or any river where the sea ebbs and flows"

Long Island Sound is not an open roadstead, haven, basin, or bay, or a river. It cannot be a sheet of water excepted from this act. It is not embraced by the narrower terms of description —it must therefore be included in the broader designation of "high seas."

This section does not mention an "arm of the sea." which must therefore, when not within the body of a county, be embraced in the term "high seas."

Judge Story considered an open roadstead to be properly termed a part of the high seas.

U. S. v. Pirates, 5 Wheat., 200.

What is the meaning of the term "high seas," when used in a criminal statute?

It is not to be confined to the broad and open ocean that washes a coast, uninterrupted by intervening islands or projecting headlands. It must embrace also the narrower seas, connected often with the open ocean by narrow straits, and sometimes formed by intervening islands. It embraces the Irish Sea, as well as the Atlantic Ocean; the Red Sea, as well as the Indian Ocean; the Sea of Japan, as well as the Pacific; the Sea of Azoff, as well as the Black Sea, and the Adriatic, as well as the Mediterranean.

In the long contest for jurisdiction between the Courts of Admiralty and Common Law, the most that the latter have contended for is that "the high seas mean the uninclosed waters of the ocean or sea coast outside the *fauces terrae*, and that where an arm of the sea, creek, haven, basin, or bay, is so narrow that a person standing on one shore could reasonably discern and distinctly see with the naked eye what was doing on the opposite shore, the waters are within the body of a county, and not the high seas."

This subject has been much discussed.

In 1 Gallison, 624, U. S. v. Ross, the murder was committed

on a schooner lying at anchor in an open roadstead near one of the Cape de Verde Islands, half a mile from the shore, and one mile from the town of Praga.

Story, J., held the place to be the high seas as charged in the indictment, saying, "the words high seas mean any waters on the sea coast which are not within the boundaries of low water mark."

In the Harriet, 1 Story, 259. Story, J., says: "We all know that the *sea* embraces all tide waters on the coast of our country, and the bays thereof. When once any boat or vessel is out of the limits of our ports or harbors, *extra fauces terrae vel portus*, the boat or vessel in a legal, as well as nautical sense, is at sea."

In U. S. v. Grush, 5 Mason, 300, Judge Story discusses the subject fully, holding that a point between Lovell's Island, George Island, and Gallop Island, within the territorial limits of the City of Boston, where the channel was nowhere over a mile wide, was *not* the high seas. But he says, "the high seas mean the open uninclosed ocean, or that portion of the sea which is without the *fauces terrae* on the sea coast, in contradistinction to that which is surrounded or inclosed between narrow headlands and promontories."

In U. S. v. Davis, 2 Sumner, 482. The crime was committed within a harbor formed by a coral reef, which nearly surrounds the Island of Raiatea, one of the Society Islands, half a mile wide from the reef to the island. At high water the reef is not visible; the entrances are narrow, not over twenty rods wide.

Story, J., doubted whether the vessel was on the high seas or not, and said that the question might be affected by considerations of a very delicate and difficult nature.

In U. S. v. Pirates, 5 Wheat., 184, the Court held that "it is competent for the jury to find that the piracy was committed on the high seas upon evidence that the vessel was at anchor in an open roadstead at the Island of Bonavista."

In U. S. v. Wiltberger, 5 Wheat., 76, the whole subject is fully discussed, and the Court held that the river Tigris in China, 35 miles from its mouth, at a point 100 yards from the shore, was *not* the high seas.

In U. S. v. Robinson, the offense was committed in a bay called Mango Bay, in the Island of Bermuda, entirely landlocked and inclosed by a reef and island from the sea; that the ship was a

quarter of a mile from the shore, and that it was about three-quarters of a mile from the one shore to the other constituting the forelands of the bay.

Story, J., held that it was *not* on the high seas.

See also,

1 Kent Com., 364–7.

Smith on Constitutional Construction, 719.

Benedict's Admiralty, 125–130.

Thomas v. Lane, 2 Sum., 9.

Constable's Case, 5 Coke, 106.

Pub. Opinion, 2 Hagg. Admr. Rep., 398.

Baker v. Hoag, 3 Selden, 555.

While these cases are somewhat conflicting, the general result is—

That the high seas mean the waters of the ocean or sea without the boundaries of a county. And that the bodies of counties comprehend all navigable rivers, creeks, ports, harbors, and arms of the sea which are so narrow as to permit a person to discern and attest anything done on the other shore.

It is not all waters embraced by *fauces terrae* that are not the high seas; the *jaws* must be shut close enough for a distinct view from one to the other, to exclude the waters from the high seas and confine them within the county.

Upon this principle is not Long Island Sound east of Hempstead Bay a part of the high seas?

It contains the waters of the ocean. It is not embraced by any *fauces terrae*, or if it is, the jaws are in some places twenty miles apart, and on an average ten miles, and nowhere do they touch each other.

It is not landlocked; it is the open highway for the commerce of the world.

It is not an arm of the sea, nor a gulf, nor a bay, nor a strait, nor a channel. It is a *Sound*, which means by its very name "a shallow sea, a sea that can be sounded."

Walker's Dict.; Webster's Dict.

It is, in fact, but a part of the Atlantic Ocean. An island narrower than itself lies between it and the open ocean. Remove the island, and the same waters, of the same sea, still wash the same coasts of the continent.

If that island were not situated six miles southward of where

this robbery was committed, could there be a doubt as to whether the sloop was on the high seas or not? How can the fact that such an island lies miles away in the sea, alter the character of these waters?

It is true an island may be so contiguous to the mainland as to reduce the intervening waters to a river or a strait, as in the case of Staten Island as it lies between New Jersey and New York. The test is, can you *see* and discern clearly from the mainland to the island. But if an island lies along the shore of a continent, though it may at one end approach so close as to be separated only by a river, yet then stretches away until it is twenty miles from the mainland, and so continues until the sound and the ocean meet, the waters it embraces, at all events where they are six miles in width, must be held to be the sea, as if the island were not there.

Swing Long Island southward on the hinge of the Narrows, while the sloop Spray lies at anchor one and one-half miles from low water mark on the shore of the continent, and at what point of inclination have you placed the vessel upon the high seas?

Swing it *northward*, and you shut the sloop out from the high seas when the fishermen of Norwalk can discern the oystermen of Oyster Bay.

If Long Island is to be excluded from the high seas, we must on the same principle exclude "The Sound," which is formed by the Island of Zealand, lying along the coast of Sweden, though it is the gate of the Baltic Sea, the highway of the commerce of all nations; for it is, in its conformation and natural features, and even in its dimensions, almost precisely similar. Approaching the continent within two and one-quarter miles at Elsinore, and widening to about twenty miles as it enters the Baltic, and being even shorter than Long Island Sound.

Did not Lord Nelson fight the battle of Copenhagen on the high seas?

We must exclude the Irish Sea, cut off from the open ocean by the Island of Ireland.

We must exclude the Gulf of St. Lawrence, cut off from the Atlantic by the Island of Newfoundland, which approaches Labrador at the Straits of Belle Isle, as Long Island does New York at Brooklyn.

We must exclude the Caribbean Sea, separated from the main

ocean by Cuba and the West India Islands, and entered only by devious straits; and we must hold that Capt. Wilkes did not arrest Mason and Slidell on the high seas.

We must exclude the Sea of Marmora, landlocked by two continents, and entered only by the Bosphorus and the Dardanelles.

We must exclude the Sea of Azoff, shut out except by a narrow strait from the Black Sea by the Crimea, which is almost an island.

These latter and like instances, are, it is true, larger seas, but they are governed by the same principles. It can make no difference whether the island which forms the sound or the lesser sea, lies five or fifty miles from the main coast. It merely divides and interrupts the waters of the high seas, and causes them to flow around it in order to beat upon their ultimate barrier—the shores of the continent.

On principles of law, therefore, Long Island Sound is a part of the high seas, and accordingly it has been always described as *the sea*, and its northern shore as *the sea coast*.

The old Patent of Connecticut, granted in 1630 by the Council for New England to the Earl of Warwick, and by him in 1631 transferred to Lords Say and Seal, Lord Brook and eleven others, among whom were John Hampden and Pym, grants "all that part of New England in America which lies and extends itself from a river there, called Narragansett River, the space or forty leagues upon a straight line *along the sea shore* toward the southwest, west and by south or west, as the *coast* lieth, towards Virginia, accounting three English miles to the league," &c.

Trumbull's Hist. of Conn., vol. 1, Appendix 1.

The Charter granted by the King to Gov. Winthrop April 23, 1662, describes Connecticut as follows: "All that part of our dominions in Newe England, bounded on the east by Norrogancett River, commonly called Norrogancett Bay, where the said river falleth into *the sea*, and on the north by the lyne of Massachusetts plantation, *and on the south by the sea*."

Colonial Records of Conn. from 1665 to 1678, p. 3.

"On November 30, 1664, Col. Nicolls and his associates appointed by the crown, met with the agents appointed by Connecticut, and determined the western boundary of Connecticut.

* * * * *And also determined the southern bounds of Con-*

necticut to be the sea. By this decision Connecticut lost all her possessions on Long Island."

Conn. Hist. Collections, 19.

1 Trum. Hist. of Conn, 273.

Lambert's Hist. of New Haven, 31.

Van Tienhoven, in his "Observations on the boundary and colonization of New Netherlands," describes the shore from Stamford towards New Amsterdam as "*the main north coast.*"

N. Y. Colonial Doc., vol. 1, 360.

The New Am. Cyc., article "Connecticut," describes its southern boundary as "the sea coast from Pawcatuck River to the mouth of Byram River."

And it has been judicially held to be a part of the high seas.

In the Amistad case, 15 Pet., 518, the vessel lay off Culloden Point, half a mile from Long Island, clearly within the Sound and west of Montauk, and it was admitted that she was on the high seas. If the *sound ends* and the *sea begins* further eastward, where is the point ?

In U. S. v. Elizabeth, 1 Paine, 10, it was distinctly held that Long Island Sound was not within the jurisdiction of New York or Connecticut, but a part of the seas. And the Court refer to the original Charter of Connecticut and the grant of Charles II., above mentioned. And Livingston, J., says: "If it belongs not to the state of New York, it is very unnecessary to inquire to whom it does belong, whether it be a territorial sea appertaining to the United States, or a part of the high seas, common to all nations."

In Manley v. The People, 3 Selden, 295, Welles, J., says: "Long Island Sound is, by well settled rules, a part of the high seas, and no one of the states bordering on it has the right by any statute or other act of sovereignty to extend her jurisdiction over it. The high seas include all those parts of the main ocean which are not within the *fauces terrae*—the mouth or chops of a channel. That is, the space between the headlands must be so near to each other that a person on one of them can see with the naked eye what is doing on the other. If the headlands or points upon the mainland are thus near, the water within them is an arm of the sea denominated a bay, gulf, estuary, &c., as the case may be, and is included, or may be, in the adjoining state or country. If the

distance between the headlands is greater than that mentioned, the waters between and within them belong to the high seas, and are exclusively under the maritime jurisdiction of the Federal Courts."

Upon principle and authority, therefore, Long Island Sound, at the point where this crime was committed, is a part of the high seas, and out of the jurisdiction of any state. And the Circuit Court for the District of New Jersey, in which the offender was found, had jurisdiction of the case.

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U. S. Circuit Court.—District of New Jersey.

THE UNITED STATES, vs. JACKALOW. } *On Indictment for Robbery On the High Seas.*

At the close of the evidence on the part of the Government, Mr. Grandin, Counsel for the defendant, asked the Court to direct an acquittal on the ground that under the proof the Court had no jurisdiction.

After argument Judge Dickerson delivered the following Opinion:

The indictment in this case was founded upon the 3d section of the act of May 15, 1860.

And the prisoner is charged in several counts with the crime of Robbery on the High Seas, and in several counts with robbery on Long Island Sound as an open roadstead.

To these charges he has plead not guilty. And it now appears conclusively that the offense (if committed at all) was committed on Long Island Sound, near its western extremity.

And the question is now presented whether under the circumstances of the case the court have jurisdiction.

In order to ascertain whether the federal courts have jurisdiction in any particular case, we must refer to the constitution of the United States and the acts of Congress passed in conformity with that constitution, for it is from that source alone that their jurisdiction is derived.

By the 1st and 2d sections of the 3d article of the constitution the judicial power is vested in the federal courts, and by the last clause of that 2d section it is declared that "The trial of all crimes (except in cases of impeachment) shall be by jury; and such trial shall be held in the state where the said crimes shall have been committed. But when not committed within any state, the trial shall be at such place or places as Congress may by law have directed."

This provision is intended to secure the rights, not only of the states, but of the citizens who might be charged with the commission of crimes. And the more effectually to secure those rights, it is declared by the 6th article of the amendments of the

constitution, that "In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the *state and district* wherein the crime shall have been committed, which district shall have been previously ascertained by law."

Thus it appears clearly, that all crimes over which the Circuit Court of the United States has jurisdiction, must be tried in the state or district in which the crime shall have been committed, and by a jury of that district.

But it was manifest that certain crimes might be committed without the jurisdiction of any state, and therefore it is provided by the same section, that when the crime was not committed in any state, "The trial should be at such place or places as the Congress might by law have directed."

Hence it appears that under the constitution Congress has no authority to direct the place of trying offenses, except where the offense is committed without the jurisdiction of any particular state or district. In view of this provision of the constitution, Congress passed the act of the 30th of April, 1790, by the 8th section of which it is provided that "If any person commit, upon the high seas, or on any river, harbor, basin or bay, out of the jurisdiction of any particular state, murder, or robbery, &c., he shall suffer death, and that the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular state, shall be in the district where the offender is apprehended, or into which he may be brought."

This is the first act directing the place of trying offenses committed without the jurisdiction of any particular state, and, with the constitution, it covers the whole case. That is to say, that all crimes committed on the high seas, or out of the jurisdiction of any state, should be tried where the offender was found, and all crimes committed on land, or within the jurisdiction of any state, should be tried in the district where committed.

The next act having a bearing upon this case was the act of March 3, 1819, entitled "An act to protect the commerce of the United States and punish the crime of piracy."

By the 5th section of which it is enacted that "If any person or persons whatsoever, shall on the high seas, commit the crime of piracy as defined by the law of nations, and such offender or offenders shall afterwards be brought into, or found in the United States, any such offender or offenders shall upon conviction thereof before the Circuit Court of the United States for the District in which he or they shall be found, be punished with death."

The duration of this act was limited to the end of the then next session of Congress, and on the 15th of May, 1820, Congress passed another act, entitled "An act to continue in force, an act to protect the commerce of the United States and punish the crime of piracy." And also to make further provision for punishing the crime of piracy. By the 3d section of which they

enact "That if any person shall upon the high seas, or in any open roadstead, or in any haven, basin or bay, or in any river where the sea ebbs and flows commit the crime of robbery, in or upon any vessel, or upon any of the ship's company of any vessel, or the lading thereof, such person shall be adjudged to be a pirate, and being thereof convicted before the Circuit Court of United States for the District in which he shall be brought, or in which he shall be found, shall suffer death, and if any person engaged in any piratical crime or enterprise, or being of the crew or ship's company of any piratical ship or vessel, shall land from such ship or vessel and on shore commit a robbery, such person shall be adjudged a pirate, and on conviction thereof before the Circuit Court of the United States for the District in which he shall be brought, or in which he shall found shall suffer death. Provided that nothing in this section contained shall be so construed as to deprive any particular state of its jurisdiction over such offenses when committed within the body of a county, or authorize the United States to try any such offenders after conviction or acquittance for the same offense in a state Court."

It is upon this section that the indictment in this case is founded, and the jurisdiction of the court in this respect depends upon its true construction.

It must be remarked that the question is not whether the Circuit Courts of the United States have jurisdiction of the offenses described in the act, but whether this court, in this case, has jurisdiction by reason of the prisoner being found and first arrested here. And, further, it may be remarked that the construction of this section has never been settled by the Supreme Court, nor by any Circuit Court, to my knowledge. The case of Combs was upon a different act, and the trial was held in the district where the offense was committed. And in the case of Hicks, although upon the same section, yet the trial was in the district where the offense was committed; and therefore in neither case did this question arise. In giving construction to statutes it "is an established rule that the intention of the Legislature is to be deduced from a view of the whole, and of every part of a statute taken and compared together. The real intention, when accurately ascertained, will always prevail over the literal sense of the terms, and the reason and intention of the lawgiver will control the strict letter of the law, when the latter would lead to palpable injustice, contradiction or absurdity."

And in the case of United States vs. Combs, Judge Story correctly remarks that "if the section admits of two interpretations, one of which brings it within and the other presses beyond the constitutional authority of Congress, it will become our duty to adopt the former construction; because a presumption never ought to be indulged that Congress meant to exercise any unconstitutional authority, unless that conclusion is forced upon the court by language altogether unambiguous."

Upon examining this section with a view to its construction, it appears most manifestly that the object of Congress was to provide for the punishment of those offenses connected with piracy which might be committed on land, or on waters within the jurisdiction of a state; and there is nothing in the whole act, or in the section that is continued by it, that shows they had any intention to interfere in any way or manner with the law or constitution regulating the place of trying offenses.

The act of March 3, 1819, section 15, provides for the punishment of piracy on the high seas, and it contains the clause that upon conviction thereof "before the Circuit Court of the United States, or the district in which he shall be found," &c. Now it it is perfectly manifest that these words, "for the district in which he or they shall be found," are superfluous and useless. They may be stricken out without altering the meaning or effect of the section in any respect, for without them, the offense being on the high seas, would be tried in the district where the offender might be found, by virtue of the act of 1790.

It is, in fact, a mere recital, stating the place where by law the offense was to be tried, rather than an enactment that it should be tried at such place.

But in the act of 1820, which continues in force, the said section of the act of 1819, and is to be considered as a part of it, they describe two classes of robbery, the one committed on the high seas, which, as the law then stood, was to be tried in the district where the offender might be found, and the other on the land and in the body of a county which, by the express provision of the constitution was to be tried in the district where the offense was committed, and yet following the form in the other section, Congress adopted the same words for the district in which he or they shall be found.

If full force is to be given to this expression as an enactment, and a literal construction adopted, the result would be to cause the offense, when committed on land, in the body of a county, to be tried in the district where the offender might be found, contrary to the act of 1790 in this respect, and in direct violation of an express provision of the constitution.

No person can for a moment believe that such was the intention of Congress. The truth without doubt is, that in using these words, they adopted the language of the section of the act of 1819, which was continued by this section, without noticing the difference in the offenses described.

I am of opinion that in continuing this section, the operation of the words, "For the district in which they shall be found," must be limited to offenses committed on the high seas, as they are in the act of 1819.

This construction, I think, would conform with the intention of the Legislature, and not violate any provision of the constitution. From this construction it follows that crimes committed within the jurisdiction of any particular state must be tried in

the state where the offense was committed, and when committed on the high seas, or in any waters out of the jurisdiction of any particular state, they must be tried in the district where the offender is arrested, or in which he may be found.

And as the offense in this case, if committed at all, was committed on Long Island Sound, the question arises: In the first place, whether that sound is within the jurisdiction of any particular state, and in the second place whether it is a part of the high seas; for the indictment in this case charges the offense to have been committed on the high seas generally, and also upon the sound, as an open roadstead. Upon referring to the Revised Statutes of New York, it appears that the territory of that state is described as follows:

"Beginning at Lyon's Point, on the mouth of a brook or river called Byram river, where it falls into Long Island Sound, and running thence up along said river," &c, describing the courses and boundaries until it comes to Sandy Hook, "and thence to the place of beginning in such manner as to include Staten Island, the Islands of Meadow on the west side thereof, Shorelen Island, Long Island, the Isle of Wight, now called Gardner's Island, Plumb Island, Robins Island, Ram Island, the Gull Islands, and all the Islands and waters in the bay of New York and within the bounds above described." In order to trace the line to comply with this description, it is absolutely necessary to pass up the South side of Long Island to Montauk Point, thence round the Point and down by Gardner's Island to Fisher's Island, thence along the stretch between Fisher's Island and the Connecticut shore to the eastern terminus of the Sound. Thus far the line must run as indicated. But a difference of opinion exists as to the mode of connecting this point with the point of beginning at Lyon's Point.

I think that the proper and natural way of connecting these points would be by a direct line drawn from the one to the other, which would be nearly parallel with the Connecticut shore in its whole extent on the Sound, and divide the Sound in such a manner as to leave about three-quarters of it included in the territory of New York, and one-quarter in that of Connecticut. To this extent New York is clearly entitled according to a fair construction of her territorial bounds, and I am not prepared to say that she is not entitled to the whole of the Sound, by virtue of the words "All the islands and waters in the Bay of New York, and within the bounds aforesaid."

That New York claims the waters of the Sound is manifest from their description of two of their counties adjoining it. As to Queens county, she bounds it on the North by the Sound, but gives it all the Islands opposite her bounds and southard of the main channel. And in the description of Westchester Co., which is opposite to Queens, she bounds the county on the South by the Sound, but gives her all the islands in the Sound to the east of Throgs Neck, and to the northward of the main channel, thus

securing her jurisdiction over the whole waters of the Sound between these two counties. It is true that they have not extended their counties over the whole of the Sound, but that does not show any want of territorial right or jurisdiction. For a state may own lands or waters, without having them laid out into counties.

I am, therefore, of opinion that the state of New York has jurisdiction over all that part of the Sound lying to the south of a line drawn from the channel between Fisher's Island and the Connecticut shore, directly to Lyon's Point. For the jurisdiction of a state is co-existive with its territorial limits and with its legislative power.

But the offence is charged to have been committed on the high seas. It is therefore necessary to inquire into the meaning of that term to ascertain whether the place, Long Island Sound, is a part of the high seas.

Kent, in his Commentaries, says, "the open sea is not capable of being possessed as private property." And further, that "high seas mean the waters of the ocean without the boundary of any county, and they are within the exclusive jurisdiction of the admiralty up to high water washes when the tide is full. The open ocean which marks the sea coast is used in contradistinction to the arms of the sea inclosed within the fauces terræ, or narrow headlands and promontories, and under this title is included rivers, harbors, basins, bays, &c., where the tide ebbs and flows." This description of the high seas will not apply to Long Island Sound.

But we should inquire as to the meaning intended to be given to these words by Congress in their legislation upon the subject. By the act of April 30, 1790, it is enacted that "if any person commit upon the high seas or in any river, haven, basin or bay, out of the jurisdiction of any particular State, murder, robbery, &c., he shall suffer death, and the trial of crimes committed on the high seas, or in any place out of the jurisdiction of any particular State, shall be in the district where the offender is apprehended or into which he may be brought."

By this act it would appear that by the term high seas, Congress meant to embrace only that body of water laying outside of the fauces terræ, and without the jurisdiction of any particular state, for if they had considered that it embraced rivers, harbors, basins or bays, it would have been unnecessary to specify them. And this impression is confirmed by the fact that in the subsequent legislation upon the subject, when they use the words high seas or any river, haven, basin or bay, it is connected with the limitation of being out of the jurisdiction of any particular state, but when the term high seas only is used, such limitation is omitted.

In the act of April 30, 1790, sections 6, 9, 12, 13 and 14, and in the act of March 20, 1804, sections 1 and 2, the term high seas is used alone, and in neither section is any exception made as to the jurisdiction of any particular State.

And in the acts of April 30, 1790, section 8, of March 3, 1825,

sections 4, 6, 7, 8, 11 and 22, the term high seas is used in connection with the words or in any river, harbor, &c., and in every instance restrained by the words out of the jurisdiction of any particular state, &c, thus clearly indicating that by the term high seas, they did not intend to embrace any waters that were within the jurisdiction of any particular state. And I believe that the section upon which the indictment in this case is founded, furnishes the only exception to the rule.

In the case of the U. States vs. Grush, where the indictment was founded upon the 22d section of the act of 1825, Justice Story, in remarking upon the meaning of the term High Seas, as used in that statute, says, "I am entirely satisfied, as well upon the language of the authorities as the descriptive words in the context, that the words High Seas, in this statute, are used in contradistinction to arms of the sea, and bays, creeks, &c., within the narrow headlands of the coast, and comprehend only the open ocean which washes the sea coast, or is not included within the body of any county or any particular state," &c.

And further, he says "that an arm of the sea may include various subordinate descriptions of waters, where the tide ebbs and flows. It may be a river, harbor, creek, basin or bay. And it is sometimes used to designate very extensive reaches of water, within the projecting capes or points of a country."

This description of an arm of the sea as distinguished from the high sea applies with full force to the Long Island Sound.

The Long Island Sound extends from Hurlgate to Fisher's Island and the other small islands at the eastern extremity, and its waters are discharged at the west end through the East River, and at the easterly end through the small straits running between those islands, the widest of which is but about four miles.

It is entirely land locked, according to the meaning of that term, and I have never seen, in any book of authority, a description of the high seas which would suit that body of water. In the Amistad case, the vessel, when described as being on the high seas, was at anchor off Montauk Posnt, some 10 or 12 miles to the eastward of the Long Island Sound, and of course can have no bearing upon this case.

And in the case of the sloop Elizabeth, the court did not inquire into the question whether the Sound was part of the high seas. But the Judge expressly says that "if the sound belong not to the state of New York, it is very unnecessary to inquire to whom it does belong, whether it is a territorial sea appertaining to the United States, or a part of the high seas common to all nations."

And in the case of Manly vs. The People, cited by the counsel for the Government, the question whether the Long Island Sound was considered as a part of the high seas, was not passed upon; on the contrary, as far as can be discovered by the imperfect report of the case, it would appear that the court were of opinion that the sound was to be considered as an arm of the sea; and

that such was the opinion of the Supreme Court, from whom the appeal was made, is manifest from the remarks of Justice Edmonds, who says that the Supreme Court had no "doubt that the boundary line from the east end of Long Island to the boundary of Connecticut, ran straight from one point to the other across the sound;" and if so, they could not have considered it as a part of the high seas, as they are not subject to such boundary lines.

I am, therefore, of opinion that Long Island Sound cannot, in any sense of the term, be considered as part of the high seas.

But these are important questions, and it is desirable that they should be settled by a full bench, and as there are other indictments involving these same questions, and more particularly as I understand that Judge Grier, in his charge to the Grand Jury in this case, intimated an opinion at variance with that now expressed, I do not consider it my duty to arrest the cause at this stage of it, but shall call upon the prisoner to make such defence as he may be able to make, and if upon submitting the case to the jury, they should be of the opinion that the prisoner is not guilty of the crime charged, a general verdict of not guilty would be entered and the case thus disposed of. But if they should consider that the prisoner committed the robbery charged against him, they would, under the direction of the court, make a special verdict establishing all the facts necessary to enable the court to determine the whole question, which might be argued and settled on motion for judgment by a full bench at the next Circuit Court, in March. And if upon that occasion the court should be divided in opinion, that division might be certified to the Supreme Court, and all the questions of the case definitely settled by the court of last resort.